

Senate File 360 - Reprinted

SENATE FILE _____
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1142)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to various provisions administered by the
2 insurance division of the department of commerce concerning
3 premium tax refunds, the interstate insurance compact, insurer
4 insolvency proceedings, individual health insurance, the small
5 employer carrier reinsurance program, insurance applications,
6 the Iowa comprehensive health association, fire insurance
7 policies, the Iowa insurance guaranty association, the FAIR
8 plan, motor vehicle service contracts, investments by county
9 and state mutual associations, reciprocal or interinsurance
10 contract premium rates, unauthorized activity of insurance
11 producers, and annuity contracts for cemetery and funeral
12 merchandise and funeral services, and making fees and
13 penalties applicable and providing effective and retroactive
14 applicability dates.
15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
16 SF 360
17 av/cc/26

PAG LIN

1 1 Section 1. Section 322.19, subsection 2, paragraph a, Code
2 2005, is amended to read as follows:

1 3 a. A ~~motor vehicle~~ service contract as defined in section
1 4 516E.1.

1 5 Sec. 2. Section 432.1, subsection 6, paragraph d, Code
1 6 2005, is amended to read as follows:

1 7 d. The sums prepaid by a company or association under this
1 8 subsection shall be allowed as credits against its premium tax
1 9 liability for the calendar year during which the payments are
1 10 made. If a prepayment made under this subsection exceeds the
1 11 annual premium tax liability, the excess shall be allowed as a
1 12 credit against subsequent prepayment or tax liabilities. The
1 13 commissioner of insurance shall authorize the department of
1 14 revenue to make a cash refund to an insurer, in lieu of a
1 15 credit against subsequent prepayment or tax liabilities, if
1 16 the insurer demonstrates the inability to recoup the funds
1 17 paid via a credit. The commissioner shall adopt rules
1 18 establishing eligibility criteria for such a refund and a
1 19 refund process. The commissioner may suspend or revoke the

1 20 license of a company or association that fails to make a
1 21 prepayment on or before the due date.

1 22 Sec. 3. Section 505A.1, Article II, section 8, Code 2005,
1 23 is amended to read as follows:

1 24 8. "Member" means the person chosen by a compacting state
1 25 as its representative to the commission, or the person's
1 26 designee. The commissioner of insurance shall be the
1 27 representative member of the compact for the state of Iowa.

1 28 Sec. 4. Section 507C.2, Code 2005, is amended by adding
1 29 the following new subsections:

1 30 NEW SUBSECTION. 01. "Affiliate" of or "affiliated" with a
1 31 specific person, means a person that directly or indirectly,
1 32 through one or more intermediaries, controls or is controlled
1 33 by, or is under common control with, the person specified.

1 34 NEW SUBSECTION. 2A. "Commodity contract" means any of the
1 35 following:

2 1 a. A contract for the purchase or sale of a commodity for
2 2 future delivery on, or subject to the rules of, a board of
2 3 trade designated as a contract market by the commodity futures
2 4 trading commission under the federal Commodity Exchange Act, 7
2 5 U.S.C. } 1 et seq., or a board of trade outside the United
2 6 States.

2 7 b. An agreement that is subject to regulation under
2 8 section 19 of the federal Commodity Exchange Act, 7 U.S.C. } 1
2 9 et seq., and that is commonly known to the commodities trade
2 10 as a margin account, margin contract, leverage account, or
2 11 leverage contract.

2 12 c. An agreement or transaction that is subject to
2 13 regulation under section 4c(b) of the federal Commodity
2 14 Exchange Act, 7 U.S.C. } 1 et seq., and that is commonly known
2 15 to the commodities trade as a commodity option.

2 16 NEW SUBSECTION. 2B. "Control" means the same as defined
2 17 in section 521A.1, subsection 3.

2 18 NEW SUBSECTION. 8A. "Forward contract" means a contract
2 19 for the purchase, sale, or transfer of a commodity, as defined
2 20 in section 1 of the federal Commodity Exchange Act, 7 U.S.C. }
2 21 1 et seq., or any similar good, article, service, right, or
2 22 interest that is presently or in the future becomes the
2 23 subject of dealing in the forward contract trade, or product
2 24 or byproduct thereof, with a maturity date more than two days
2 25 after the date the contract is entered into, including, but
2 26 not limited to, a repurchase transaction, reverse repurchase
2 27 transaction, consignment, lease, swap, hedge transaction,
2 28 deposit, loan, option, allocated transaction, unallocated
2 29 transaction, or a combination of them or option on any of
2 30 them. "Forward contract" does not include a commodity
2 31 contract.

2 32 NEW SUBSECTION. 12A. "Netting agreement" means an
2 33 agreement, including terms and conditions incorporated by
2 34 reference therein, including a master agreement, which master
2 35 agreement, together with all schedules, confirmations,
3 1 definitions, and addenda thereto and transactions under any
3 2 thereof, shall be treated as one netting agreement, that
3 3 documents one or more transactions between parties to the
3 4 agreement for or involving one or more qualified financial
3 5 contracts and that provides for the netting or liquidation of
3 6 qualified financial contracts or present or future payment
3 7 obligations or payment entitlements thereunder, including
3 8 liquidation or closeout values relating to such obligations or
3 9 entitlements among the parties to the netting agreement.

3 10 NEW SUBSECTION. 13A. "Qualified financial contract" means
3 11 a commodity contract, forward contract, repurchase agreement,
3 12 securities contract, swap agreement, and any similar agreement
3 13 that the commissioner determines by regulation, resolution, or
3 14 order to be a qualified financial contract for the purposes of
3 15 this chapter.

3 16 NEW SUBSECTION. 15A. "Repurchase agreement" means an
3 17 agreement, including related terms, that provides for the
3 18 transfer of certificates of deposit, eligible bankers'
3 19 acceptances, or securities that are direct obligations of, or
3 20 that are fully guaranteed as to principal and interest by, the
3 21 United States or an agency of the United States against the
3 22 transfer of funds by the transferee of the certificates of
3 23 deposit, eligible bankers' acceptances or securities, with a
3 24 simultaneous agreement by the transferee to transfer to the
3 25 transferor certificates of deposit, eligible bankers'
3 26 acceptances, or securities as described above, at a date
3 27 certain not later than one year after the transfers or on
3 28 demand against the transfer of funds. For the purposes of
3 29 this definition, the items that may be subject to a repurchase
3 30 agreement include, but are not limited to, mortgage-related
3 31 securities, a mortgage loan, and an interest in a mortgage
3 32 loan, but shall not include any participation in a commercial
3 33 mortgage loan, unless the commissioner determines by rule,
3 34 resolution, or order to include the participation within the
3 35 meaning of the term. Repurchase agreement also applies to a
4 1 reverse repurchase agreement.

4 2 NEW SUBSECTION. 16A. "Securities contract" means a
4 3 contract for the purchase, sale, or loan of a security,
4 4 including an option for the repurchase or sale of a security,
4 5 certificate of deposit, or group or index of securities,
4 6 including an interest therein or based on the value thereof,
4 7 or an option entered into on a national securities exchange
4 8 relating to foreign currencies, or the guarantee of a
4 9 settlement of cash or securities by or to a securities
4 10 clearing agency. For the purposes of this definition, the
4 11 term "security" includes a mortgage loan, mortgage-related
4 12 securities, and an interest in any mortgage loan or mortgage=
4 13 related security.

4 14 NEW SUBSECTION. 18A. "Swap agreement" means an agreement,
4 15 including the terms and conditions incorporated by reference
4 16 in an agreement, that is a rate swap agreement, basis swap,
4 17 commodity swap, forward rate agreement, interest rate future,

4 18 interest rate option, forward foreign exchange agreement, spot
4 19 foreign exchange agreement, rate cap agreement, rate floor
4 20 agreement, rate collar agreement, currency swap agreement,
4 21 cross-currency rate swap agreement, currency future, or
4 22 currency option or any other similar agreement, and includes
4 23 any combination of agreements and an option to enter into an
4 24 agreement.

4 25 Sec. 5. NEW SECTION. 507C.28A QUALIFIED FINANCIAL
4 26 CONTRACTS.

4 27 1. Notwithstanding any other provision of this chapter to
4 28 the contrary, including any other provision of this chapter
4 29 permitting the modification of contracts, or other law of a
4 30 state, a person shall not be stayed or prohibited from
4 31 exercising any of the following:

4 32 a. A contractual right to terminate, liquidate, or close
4 33 out any netting agreement or qualified financial contract with
4 34 an insurer because of any of the following:

4 35 (1) The insolvency, financial condition, or default of the
5 1 insurer at any time, provided that the right is enforceable
5 2 under applicable law other than this chapter.

5 3 (2) The commencement of a formal delinquency proceeding
5 4 under this chapter.

5 5 b. Any right under a pledge, security, collateral, or
5 6 guarantee agreement or any other similar security arrangement
5 7 or credit support document relating to a netting agreement or
5 8 qualified financial contract.

5 9 c. Subject to any provision of section 507C.30, subsection
5 10 2, any right to set off or net out any termination value,
5 11 payment amount, or other transfer obligation arising under or
5 12 in connection with a netting agreement or qualified financial
5 13 contract where the counterparty or its guarantor is organized
5 14 under the laws of the United States or a state or foreign
5 15 jurisdiction approved by the securities valuation office or
5 16 the national association of insurance commissioners as
5 17 eligible for netting.

5 18 2. Upon termination of a netting agreement, the net or
5 19 settlement amount, if any, owed by a nondefaulting party to an
5 20 insurer against which an application or petition has been
5 21 filed under this chapter shall be transferred to or on the
5 22 order of the receiver for the insurer, even if the insurer is
5 23 the defaulting party, notwithstanding any provision in the
5 24 netting agreement that may provide that the nondefaulting
5 25 party is not required to pay any net or settlement amount due
5 26 to the defaulting party upon termination. Any limited two=
5 27 way payment provision in a netting agreement with an insurer
5 28 that has defaulted shall be deemed to be a full two-way
5 29 payment provision as against the defaulting insurer. Any such
5 30 amount shall, except to the extent it is subject to one or
5 31 more secondary liens or encumbrances, be a general asset of
5 32 the insurer.

5 33 3. In making any transfer of a netting agreement or
5 34 qualified financial contract of an insurer subject to a
5 35 proceeding under this chapter, the receiver shall do either of
6 1 the following:

6 2 a. Transfer to one party, other than an insurer subject to
6 3 a proceeding under this chapter, all netting agreements and
6 4 qualified financial contracts between a counterparty or any
6 5 affiliate of the counterparty and the insurer that is the
6 6 subject of the proceeding, including all of the following:

6 7 (1) All rights and obligations of each party under each
6 8 such netting agreement and qualified financial contract.

6 9 (2) All property, including any guarantees or credit
6 10 support documents, securing any claims of each party under
6 11 each such netting agreement and qualified financial contract.

6 12 b. Transfer none of the netting agreements, qualified
6 13 financial contracts, rights, obligations, or property referred
6 14 to in paragraph "a" with respect to the counterparty and any
6 15 affiliate of the counterparty.

6 16 4. If a receiver for an insurer makes a transfer of one or
6 17 more netting agreements or qualified financial contracts, the
6 18 receiver shall use the receiver's best efforts to notify any
6 19 person who is a party to the netting agreements or qualified
6 20 financial contracts of the transfer by noon of the receiver's
6 21 local time on the business day following the transfer. For
6 22 purposes of this subsection, "business day" means a day other
6 23 than a Saturday, Sunday, or any day on which either the New
6 24 York stock exchange or the federal reserve bank of New York is
6 25 closed.

6 26 5. Notwithstanding any other provision of this chapter to
6 27 the contrary, a receiver shall not avoid a transfer of money
6 28 or other property arising under or in connection with a

6 29 netting agreement or qualified financial contract, or any
6 30 pledge security, collateral, or guarantee agreement or any
6 31 other similar security arrangement or credit support document
6 32 relating to a netting agreement or qualified financial
6 33 contract, that is made before the commencement of a formal
6 34 delinquency proceeding under this chapter. However, a
6 35 transfer may be avoided under section 507C.28 if the transfer
7 1 was made with actual intent to hinder, delay, or defraud the
7 2 insurer, a receiver appointed for the insurer, or existing or
7 3 future creditors.

7 4 6. In exercising any of its powers under this chapter to
7 5 disaffirm or repudiate a netting agreement or qualified
7 6 financial contract, the receiver must take action with respect
7 7 to each netting agreement or qualified financial contract and
7 8 all transactions entered into in connection therewith, in its
7 9 entirety. Notwithstanding any other provision of this chapter
7 10 to the contrary, any claim of a counterparty against the
7 11 estate arising from the receiver's disaffirmance or
7 12 repudiation of a netting agreement or qualified financial
7 13 contract that has not been previously affirmed in the
7 14 liquidation or in the immediately preceding rehabilitation
7 15 case shall be determined and shall be allowed or disallowed as
7 16 if the claim had arisen before the date of the filing of the
7 17 petition for liquidation or, if a rehabilitation proceeding is
7 18 converted to a liquidation proceeding, as if the claim had
7 19 arisen before the date of filing the petition for
7 20 rehabilitation. The amount of the claim shall be the actual
7 21 direct compensatory damages determined as of the date of the
7 22 disaffirmance or repudiation of the netting agreement or
7 23 qualified financial contract. The term "actual direct
7 24 compensatory damages" does not include punitive or exemplary
7 25 damages, damages for lost profit or lost opportunity, or
7 26 damages for pain and suffering, but does include normal and
7 27 reasonable costs of cover or other reasonable measures of
7 28 damages utilized in the derivatives market for the contract
7 29 and agreement claims.

7 30 7. The term "contractual right" as used in this section
7 31 includes any right, whether or not evidenced in writing,
7 32 arising under statutory or common law, a rule or bylaw of a
7 33 national securities exchange, national securities clearing
7 34 organization or securities clearing agency, a rule or bylaw,
7 35 or a resolution of the governing body of a contract market or
8 1 its clearing organization, or under law merchant.

8 2 8. This section shall not apply to persons who are
8 3 affiliates of the insurer that is the subject of the
8 4 proceeding.

8 5 9. All rights of a counterparty under this chapter shall
8 6 apply to netting agreements and qualified financial contracts
8 7 entered into on behalf of the general account or separate
8 8 accounts, provided that the assets of each separate account
8 9 are available only to counterparties to netting agreements and
8 10 qualified financial contracts entered into on behalf of that
8 11 separate account.

8 12 Sec. 6. Section 507C.30, subsection 2, paragraph a,
8 13 subparagraphs (4) and (5), Code 2005, are amended to read as
8 14 follows:

8 15 (4) The obligation of the person is owed to the affiliate
8 16 of the insurer, or any other entity or association other than
8 17 the insurer.

8 18 ~~(4)~~ (5) The obligation of the person is to pay an
8 19 assessment levied against the members or subscribers of the
8 20 insurer, or is to pay a balance upon a subscription to the
8 21 capital stock of the insurer, or is in any other way in the
8 22 nature of a capital contribution.

8 23 ~~(5)~~ (6) The obligation of the person is to pay earned
8 24 premiums to the insurer.

8 25 Sec. 7. Section 509.3, subsection 1, Code 2005, is amended
8 26 to read as follows:

8 27 1. The policy shall have a provision that a copy of the
8 28 application, if any, of the policyholder shall be attached to
8 29 the policy when issued or shall be furnished to the
8 30 policyholder within thirty days after the policy is issued,
8 31 that all statements made by the policyholder or by the persons
8 32 insured shall be deemed representations and not warranties,
8 33 and that no statement made by any person insured shall be used
8 34 in any contest unless a copy of the instrument containing the
8 35 statement is or has been furnished to such person.

9 1 Sec. 8. Section 513B.12, Code 2005, is amended by adding
9 2 the following new subsection:

9 3 NEW SUBSECTION. 6. During the period of time that the
9 4 operation of the small employer carrier reinsurance program is

9 5 suspended pursuant to section 513B.13, subsection 14, a small
9 6 employer carrier is not required to make an application to
9 7 become a risk=assuming carrier pursuant to this section.

9 8 Sec. 9. Section 513B.13, subsection 3, Code 2005, is
9 9 amended by adding the following new paragraph:

9 10 NEW PARAGRAPH. e. During the period of time that the
9 11 program is suspended pursuant to subsection 14, the size of
9 12 the board may be reduced with the approval of the
9 13 commissioner.

9 14 Sec. 10. Section 513B.17, subsection 4, Code 2005, is
9 15 amended by striking the subsection.

9 16 Sec. 11. Section 513C.6, Code 2005, is amended by adding
9 17 the following new subsection:

9 18 NEW SUBSECTION. 7. An individual who has coverage as a
9 19 dependent under a basic or standard health benefit plan may,
9 20 when that individual is no longer a dependent under such
9 21 coverage, elect to continue coverage under the basic or
9 22 standard health benefit plan if the individual so elects
9 23 immediately upon termination of the coverage under which the
9 24 individual was covered as a dependent.

9 25 Sec. 12. Section 514A.5, subsection 1, Code 2005, is
9 26 amended to read as follows:

9 27 1. The insured shall not be bound by any statement made in
9 28 an application for a policy unless a copy of such application
9 29 is ~~attached to or~~ endorsed on the policy when issued as a part
9 30 thereof ~~or is furnished to the policyholder within thirty days~~
9 31 ~~after the policy is issued.~~ If any such policy delivered or

9 32 issued for delivery to any person in this state shall be
9 33 reinstated or renewed, and the insured or the beneficiary or
9 34 assignee of such policy shall make written request to the
9 35 insurer for a copy of the application, if any, for such
10 1 reinstatement or renewal, the insurer shall within fifteen
10 2 days after the receipt of such request at its home office or
10 3 any branch office of the insurer, deliver or mail to the
10 4 person making such request, a copy of such application. If
10 5 such copy shall not be so delivered or mailed, the insurer
10 6 shall be precluded from introducing such application as
10 7 evidence in any action or proceeding based upon or involving
10 8 such policy or its reinstatement or renewal.

10 9 Sec. 13. Section 514B.13, unnumbered paragraph 2, Code
10 10 2005, is amended to read as follows:

10 11 Health maintenance organizations providing services
10 12 exclusively on a group contract basis may limit the open
10 13 enrollment provided for in this section to all members of the
10 14 group covered by the contract, including those members of the
10 15 group who previously waived coverage.

10 16 Sec. 14. Section 514E.2, subsection 1, paragraph a, Code
10 17 2005, is amended to read as follows:

10 18 a. All carriers and all organized delivery systems
10 19 licensed by the director of public health providing health
10 20 insurance or health care services in Iowa, whether on an
10 21 individual or group basis, and all other insurers designated
10 22 by the association's board of directors and approved by the
10 23 commissioner shall be members of the association.

10 24 Sec. 15. Section 514E.2, subsection 5, paragraph 1, Code
10 25 2005, is amended to read as follows:

10 26 1. Develop a method of advising applicants of the
10 27 availability of other coverages outside the association, ~~and~~
10 28 ~~shall promulgate a list of health conditions the existence of~~
10 29 ~~which would make an applicant eligible without demonstrating a~~
10 30 ~~rejection of coverage by one carrier.~~

10 31 Sec. 16. Section 514E.2, subsection 7, Code 2005, is
10 32 amended by adding the following new unnumbered paragraph:

10 33 NEW UNNUMBERED PARAGRAPH. For purposes of this subsection,
10 34 "total health insurance premiums" and "payments for subscriber
10 35 contracts" include, without limitation, premiums or other
11 1 amounts paid to or received by a member for individual and
11 2 group health plan care coverage provided under any chapter of
11 3 the Code or Acts, and "paid losses" includes, without
11 4 limitation, claims paid by a member operating on a self=funded
11 5 basis for individual and group health plan care coverage
11 6 provided under any chapter of the Code or Acts. For purposes
11 7 of calculating and conducting the assessment, the association
11 8 shall have the express authority to require members to report
11 9 on an annual basis each member's total health insurance
11 10 premiums and payments for subscriber contracts and paid
11 11 losses. A member is liable for its share of the assessment
11 12 calculated in accordance with this section regardless of
11 13 whether it participates in the individual insurance market.

11 14 Sec. 17. Section 514E.7, subsection 1, Code 2005, is
11 15 amended by adding the following new paragraphs:

11 16 NEW PARAGRAPH. d. That the individual has a health
11 17 condition that is established by the association's board of
11 18 directors, with the approval of the commissioner, to be
11 19 eligible for plan coverage.

11 20 NEW PARAGRAPH. e. That the individual has coverage under
11 21 a basic or standard health benefit plan under chapter 513C.
11 22 Sec. 18. Section 514E.8, subsection 1, Code 2005, is
11 23 amended to read as follows:

11 24 1. An association policy shall contain provisions under
11 25 which the association is obligated to renew the coverage for
11 26 an individual until the day the individual becomes eligible
11 27 for Medicare coverage based on age, provided that any
11 28 individual who is covered by an association policy and is
11 29 eligible for Medicare coverage based on age prior to January
11 30 1, 2005, may continue to renew the coverage under the
11 31 association policy.

11 32 Sec. 19. Section 515.138, sixth subsection, paragraph
11 33 entitled concealment == fraud, Code 2005, is amended to read
11 34 as follows:

11 35 CONCEALMENT == FRAUD. This entire policy shall be void if,
12 1 whether before or after a loss, ~~the an~~ insured has willfully
12 2 concealed or misrepresented any material fact or circumstance
12 3 concerning this insurance or the subject thereof, or the
12 4 interest of ~~the an~~ insured therein, or in case of any fraud or
12 5 false swearing by ~~the an~~ insured relating thereto.

12 6 Sec. 20. Section 515.138, sixth subsection, paragraph
12 7 entitled perils not included, Code 2005, is amended to read as
12 8 follows:

12 9 PERILS NOT INCLUDED. This company shall not be liable for
12 10 loss by fire or other perils insured against in this policy
12 11 caused, directly or indirectly, by: (a) Enemy attack by armed
12 12 forces, including action taken by military, naval or air
12 13 forces in resisting an actual or an immediately impending
12 14 enemy attack; (b) invasion; (c) insurrection; (d) rebellion;
12 15 (e) revolution; (f) civil war; (g) usurped power; (h) order of
12 16 any civil authority except acts of destruction at the time of
12 17 and for the purpose of preventing the spread of fire, provided
12 18 that such fire did not originate from any of the perils
12 19 excluded by this policy; (i) neglect of ~~the an~~ insured to use
12 20 all reasonable means to save and preserve the property at and
12 21 after a loss, or when the property is endangered by fire in
12 22 neighboring premises; (j) nor shall this company be liable for
12 23 loss by theft.

12 24 Sec. 21. Section 515.138, sixth subsection, paragraph
12 25 entitled conditions suspending or restricting insurance, Code
12 26 2005, is amended to read as follows:

12 27 CONDITIONS SUSPENDING OR RESTRICTING INSURANCE. Unless
12 28 otherwise provided in writing added hereto this company shall
12 29 not be liable for loss occurring under any of the following
12 30 circumstances:

12 31 a. While the hazard is created or increased by any means
12 32 within the control or knowledge of ~~the an~~ insured; ~~or,~~

12 33 b. While a described building, whether intended for
12 34 occupancy by owner or tenant, is vacant or unoccupied beyond a
12 35 period of sixty consecutive days; ~~or,~~

13 1 c. As a result of explosion or riot, unless fire ensue,
13 2 and in that event for loss by fire only.

13 3 Sec. 22. Section 515B.2, subsection 4, paragraph b,
13 4 subparagraph (7), Code 2005, is amended to read as follows:

13 5 (7) That would otherwise be a covered claim, but is an
13 6 obligation to or on behalf of a person who has a net worth, ~~on~~
13 7 ~~the date of the occurrence giving rise to the claim,~~ greater
13 8 than that allowed by the guarantee fund law of the state of
13 9 residence of the claimant, and which state has denied coverage
13 10 to that claimant on that basis.

13 11 Sec. 23. Section 515B.17, Code 2005, is amended to read as
13 12 follows:

13 13 515B.17 TIMELY FILING OF CLAIMS.

13 14 Notwithstanding any other provision of this chapter, a
13 15 covered claim shall not include any claim filed with the
13 16 association after twenty-four months from the date of the
13 17 order of liquidation or after the final date set by the court
13 18 for the filing of claims against the insolvent insurer or its
13 19 receiver, whichever occurs first.

13 20 Sec. 24. Section 515F.36, subsection 2, Code 2005, is
13 21 amended to read as follows:

13 22 2. The committee shall consist of seven members, ~~one of~~
13 23 ~~whom.~~

13 24 a. Five of the members shall be elected ~~by~~ to the
13 25 committee, with one member from each of the following:

13 26 a- (1) American insurance association.

13 27 ~~b. (2) Alliance of American insurers Property casualty~~
13 28 ~~insurers association of America.~~

13 29 ~~c. National association of independent insurers.~~

13 30 ~~d. (3) Iowa insurance institute.~~

13 31 ~~e. (4) Mutual insurance association of Iowa.~~

13 32 ~~f. (5) Independent insurance agents of Iowa.~~

13 33 ~~g. b. All other insurers Two of the members shall be~~
13 34 ~~elected to the committee by other insurer members of the plan.~~

13 35 Sec. 25. Section 516E.1, Code 2005, is amended to read as
14 1 follows:

14 2 516E.1 DEFINITIONS.

14 3 For the purposes of this chapter:

14 4 1. "Administrator" means the deputy administrator
14 5 appointed pursuant to section 502.601.

14 6 ~~1. 2. "Commissioner" means the commissioner of insurance~~
14 7 ~~as provided in section 505.1 or the deputy administrator~~
14 8 ~~appointed under section 502.601.~~

14 9 3. "Maintenance agreement" means a contract of limited
14 10 duration that provides for scheduled maintenance only.

14 11 ~~2. 4. "Mechanical breakdown insurance" means a policy,~~
14 12 ~~contract, or agreement that undertakes to perform or provide~~
14 13 ~~repair or replacement service, or indemnification for that~~
14 14 ~~service, for the operational or structural failure of a motor~~
14 15 ~~vehicle due to a defect in materials or skill of work or~~
14 16 ~~normal wear and tear, and that is issued by an insurance~~
14 17 ~~company authorized to do business in this state.~~

14 18 ~~3. 5. "Motor vehicle" means any self-propelled vehicle~~
14 19 ~~subject to registration under chapter 321.~~

14 20 ~~4. "Motor vehicle service contract" or "service contract"~~
14 21 ~~means a contract or agreement given for consideration over and~~
14 22 ~~above the lease or purchase price of a new or used motor~~
14 23 ~~vehicle having a gross vehicle weight rating of less than~~
14 24 ~~sixteen thousand pounds that undertakes to perform or provide~~
14 25 ~~repair or replacement service, or indemnification for that~~
14 26 ~~service, for the operational or structural failure of a motor~~
14 27 ~~vehicle due to a defect in materials or skill of work or~~
14 28 ~~normal wear and tear, but does not include mechanical~~
14 29 ~~breakdown insurance or maintenance agreements providing~~
14 30 ~~scheduled repair and maintenance services for leased vehicles.~~

14 31 ~~5. 6. "Motor vehicle service contract provider" or~~
14 32 ~~"provider" "Provider" means a person who issues, makes,~~
14 33 ~~provides, sells, or offers to sell a motor vehicle service~~
14 34 ~~contract.~~

14 35 ~~6. "Motor vehicle service contract reimbursement insurance~~
15 1 ~~policy" or "reimbursement insurance policy" means a policy of~~
15 2 ~~insurance providing coverage for all obligations and~~
15 3 ~~liabilities incurred by a motor vehicle service contract~~
15 4 ~~provider under the terms of motor vehicle service contracts~~
15 5 ~~issued by the provider.~~

15 6 7. "Record" means information stored or preserved in any
15 7 medium, including in an electronic or paper format. A record
15 8 includes but is not limited to documents, books, publications,
15 9 accounts, correspondence, memoranda, agreements, computer
15 10 files, film, microfilm, photographs, and audio or visual
15 11 tapes.

15 12 8. "Reimbursement insurance policy" means a policy of
15 13 insurance issued to a service company and pursuant to which
15 14 the insurer agrees, for the benefit of the service contract
15 15 holders, to discharge all of the obligations and liabilities
15 16 of the service company under the terms of service contracts
15 17 issued by the service company in the event of nonperformance
15 18 by the service company. For the purposes of this definition,
15 19 "all obligations and liabilities" include, but are not limited
15 20 to, failure of the service company to perform under the
15 21 service contract and the return of the unearned service
15 22 company fee in the event of the service company's
15 23 unwillingness or inability to reimburse the unearned service
15 24 company fee in the event of termination of a service contract.

15 25 9. "Service company" means a person who issues and is
15 26 obligated to perform, or arrange for the performance of,
15 27 services pursuant to a service contract.

15 28 10. "Service contract" means a contract or agreement given
15 29 for consideration over and above the lease or purchase price
15 30 of a new or used motor vehicle having a gross vehicle weight
15 31 rating of less than sixteen thousand pounds, that undertakes
15 32 to perform or provide repair or replacement service, or
15 33 indemnification for that service, for the operation or
15 34 structural failure of a motor vehicle due to a defect in
15 35 materials or skill of work or normal wear and tear, but does
16 1 not include mechanical breakdown insurance or maintenance
16 2 agreements.

16 3 ~~8-~~ 11. "Service contract holder" means a person who
16 4 purchases a motor vehicle service contract.

16 5 12. "Third-party administrator" means a person who
16 6 contracts with a service company to be responsible for the
16 7 administration of the service company's service contracts,
16 8 including processing and adjudicating claims pursuant to a
16 9 service contract.

16 10 Sec. 26. Section 516E.2, Code 2005, is amended to read as
16 11 follows:

16 12 516E.2 INSURANCE REQUIRED REQUIREMENTS FOR DOING BUSINESS.

16 13 1. A motor vehicle service contract shall not be issued,
16 14 sold, or offered for sale in this state unless the provider of
16 15 the service contract is insured under a motor vehicle service
16 16 contract reimbursement insurance policy issued by an insurer
16 17 authorized to do business in this state. service company does
16 18 all of the following:

16 19 a. Provides a receipt for the purchase of the service
16 20 contract to the service contract holder.

16 21 b. Provides a copy of the service contract to the service
16 22 contract holder within a reasonable period of time after the
16 23 date of purchase of the service contract.

16 24 2. The issuer of a reimbursement insurance policy shall
16 25 not cancel a reimbursement insurance policy unless a written
16 26 notice has been received by the commissioner and by each
16 27 applicable provider, including automobile dealers and third-
16 28 party administrators. The notice shall fix the date of
16 29 cancellation at a date no earlier than ten days after receipt
16 30 of the notice by the commissioner and by the applicable
16 31 provider. The notice may be made in person or by mail and a
16 32 post office department receipt of certified or registered
16 33 mailing shall be deemed proof of receipt of the notice. A
16 34 service company shall not issue a service contract or arrange
16 35 to perform services pursuant to a service contract unless the
17 1 service company is registered with the commissioner. A
17 2 service company shall file a registration with the
17 3 commissioner annually, on a form prescribed by the
17 4 commissioner, accompanied by a registration fee in the amount
17 5 of five hundred dollars.

17 6 3. In order to assure the faithful performance of a
17 7 service company's obligations to its service contract holders,
17 8 the administrator may by rule require financial responsibility
17 9 standards.

17 10 4. The commissioner may issue an order denying,
17 11 suspending, or revoking any registration if the commissioner
17 12 finds that the order is in the public interest and finds any
17 13 of the following:

17 14 a. The registration is incomplete in any material respect
17 15 or contains any statement which, in light of the circumstances
17 16 under which the registration was made, is determined by the
17 17 commissioner to be false or misleading with respect to any
17 18 material fact.

17 19 b. A provision of this chapter or a rule, order, or
17 20 condition lawfully imposed under this chapter, has been
17 21 willfully violated in connection with the sale of service
17 22 contracts by any of the following persons:

17 23 (1) The person filing the registration, but only if the
17 24 person filing the registration is directly or indirectly
17 25 controlled by or acting for the service company.

17 26 (2) The service company, any partner, officer, or director
17 27 of the service company or any person occupying a similar
17 28 status or performing similar functions for the service
17 29 company, or any person directly or indirectly controlling or
17 30 controlled by the service company.

17 31 c. The service company has not filed a document or
17 32 information required under this chapter.

17 33 d. The service company's literature or advertising is
17 34 misleading, incorrect, incomplete, or deceptive.

17 35 e. The service company has failed to pay the proper filing
18 1 fee. However, the commissioner shall vacate an order issued
18 2 pursuant to this paragraph when the proper fee has been paid.

18 3 f. The service company does not have the minimum net
18 4 worth, as determined in accordance with generally accepted
18 5 accounting principles, required under this chapter.

18 6 The commissioner may vacate or modify an order issued under
18 7 this subsection if the commissioner finds that the conditions
18 8 which prompted the entry of the order have changed or that it
18 9 is otherwise in the public interest to do so.

18 10 Sec. 27. Section 516E.3, Code 2005, is amended to read as
18 11 follows:

18 12 516E.3 FILING AND FEE REQUIREMENTS.

18 13 1. SERVICE COMPANIES.

18 14 ~~a. A motor vehicle service contract shall not be issued,~~
18 15 ~~sold, or offered for sale in this state unless a true and~~
18 16 ~~correct copy of the service contract, and the provider's~~
18 17 ~~service company's reimbursement insurance policy have been~~
18 18 ~~filed with the commissioner by the service company.~~
18 19 ~~2. b. In addition to any other required filings, an~~
18 20 ~~accurate copy of the service contract and the provider's~~
18 21 ~~reimbursement insurance policy, the A service company shall~~
18 22 ~~file a consent to service of process on the commissioner, and~~
18 23 ~~such other information as the commissioner requires shall be~~
18 24 ~~filed annually with the commissioner no later than the first~~
18 25 ~~day of August. If the first day of August falls on a weekend~~
18 26 ~~or a holiday, the date for filing shall be the next business~~
18 27 ~~day. In addition to the annual filing, the provider service~~
18 28 ~~company shall promptly file copies of any amended documents if~~
18 29 ~~material amendments have been made in the materials on file~~
18 30 ~~with the commissioner. If an annual filing is made after the~~
18 31 ~~first of August and sales have occurred during the period when~~
18 32 ~~the provider service company was in noncompliance with this~~
18 33 ~~section, the commissioner shall assess an additional filing~~
18 34 ~~fee that is two times the amount normally required for an~~
18 35 ~~annual filing. A fee shall not be charged for interim filings~~
19 1 ~~made to keep the materials filed with the division current and~~
19 2 ~~accurate. The annual filing shall be accompanied by a filing~~
19 3 ~~fee determined by the commissioner which shall be sufficient~~
19 4 ~~to defray the costs of administering this chapter.~~

19 5 ~~3. a. c. A motor vehicle service contract provider~~
19 6 ~~service company shall promptly file the following information~~
19 7 ~~with the insurance commissioner:~~

19 8 (1) A change in the name or ownership of the provider
19 9 service company.

19 10 (2) The termination of the provider's service company's
19 11 business.

19 12 b. (3) The provider service company is not required to
19 13 submit a fee as part of this filing.

19 14 2. PROVIDERS.

19 15 a. A service contract shall not be sold or offered for
19 16 sale in this state unless a true and correct copy of the
19 17 service contract has been filed with the commissioner by the
19 18 provider.

19 19 b. A provider shall file a consent to service of process
19 20 on the commissioner and such other information as the
19 21 commissioner requires annually with the commissioner no later
19 22 than August 1. If August 1 falls on a weekend or a holiday,
19 23 the date for filing shall be the next business day. In
19 24 addition to the annual filing, the provider shall promptly
19 25 file copies of any amended documents if material amendments
19 26 have been made in the materials on file with the commissioner.
19 27 If an annual filing is made after August 1 and sales have
19 28 occurred during the period when the provider was in
19 29 noncompliance with this section, the commissioner shall assess
19 30 an additional filing fee that is two times the amount normally
19 31 required for an annual filing. A fee shall not be charged for
19 32 interim filings made to keep the materials filed with the
19 33 division current and accurate. The annual filing shall be
19 34 accompanied by a filing fee in the amount of one hundred
19 35 dollars.

20 1 c. A provider shall promptly file the following
20 2 information with the commissioner:

20 3 (1) A change in the name or ownership of the provider.

20 4 (2) The termination of the provider's business.

20 5 (3) A provider is not required to submit a fee as part of
20 6 this filing.

20 7 Sec. 28. Section 516E.4, Code 2005, is amended by striking
20 8 the section and inserting in lieu thereof the following:

20 9 516E.4 REIMBURSEMENT INSURANCE POLICY REQUIREMENTS.

20 10 1. REQUIRED DISCLOSURES. A reimbursement insurance policy
20 11 insuring a service contract issued, sold, or offered for sale
20 12 in this state shall conspicuously state that, upon failure of
20 13 the service company to perform under the contract, including
20 14 but not limited to a failure to return the unearned
20 15 consideration paid for a service contract in excess of the
20 16 premium, the insurer that issued the policy shall pay on
20 17 behalf of the service company any amount that is owed to the
20 18 service contract holder by the service company to satisfy the
20 19 service company's obligations under a service contract issued
20 20 or sold by the service company.

20 21 2. TERMINATION. As applicable, an insurer that issued a
20 22 reimbursement insurance policy shall not terminate the policy
20 23 unless a written notice has been received by the commissioner
20 24 and by each applicable provider, service company, or third=

20 25 party administrator. The notice shall fix the date of
20 26 termination at a date no earlier than ten days after receipt
20 27 of the notice by the commissioner and by the applicable
20 28 provider, service company, or third-party administrator. The
20 29 notice may be delivered in person or sent by mail, and a
20 30 restricted certified mail return receipt shall be deemed proof
20 31 of receipt of notice. The termination of a reimbursement
20 32 insurance policy shall not reduce the issuer's responsibility
20 33 for a service contract issued by a service company prior to
20 34 the date of termination.

20 35 3. INDEMNIFICATION OR SUBROGATION. This section does not
21 1 prevent or limit the right of an insurer that issued a
21 2 reimbursement insurance policy to seek indemnification from or
21 3 subrogation against a service company if the insurer pays or
21 4 is obligated to pay a service contract holder sums that the
21 5 service company was obligated to pay pursuant to the
21 6 provisions of a service contract or pursuant to a contractual
21 7 agreement.

21 8 Sec. 29. Section 516E.5, Code 2005, is amended to read as
21 9 follows:

21 10 516E.5 DISCLOSURE TO SERVICE CONTRACT HOLDERS == CONTRACT
21 11 PROVISIONS.

21 12 1. A ~~motor vehicle~~ service contract shall not be issued,
21 13 sold, or offered for sale in this state unless the contract
21 14 conspicuously states that the obligations of the ~~provider~~
21 15 service company to the service contract holder are guaranteed
21 16 under the service contract a reimbursement insurance policy,
21 17 and unless the including a statement in substantially the
21 18 following form: "Obligations of the service company under
21 19 this service contract are guaranteed under a reimbursement
21 20 insurance policy. If the service company fails to pay or
21 21 provide service on a claim within sixty days after proof of
21 22 loss has been filed with the service company, the service
21 23 contract holder is entitled to make a claim directly against
21 24 the reimbursement insurance policy." A claim against a
21 25 reimbursement insurance policy shall also include a claim for
21 26 return of the unearned consideration paid for the service
21 27 contract in excess of the premium paid. A service contract
21 28 shall conspicuously states state the name and address of the
21 29 issuer of the reimbursement insurance policy for that service
21 30 contract.

21 31 2. A ~~motor vehicle~~ service contract shall be written in
21 32 clear, understandable language and the entire contract shall
21 33 be printed or typed in easy-to-read type, size, and style, and
21 34 shall not be issued, sold, or offered for sale in this state
21 35 unless the contract does all of the following:

22 1 a. Clearly and conspicuously states the name and address
22 2 of the service company, describes the service company's
22 3 obligations to perform services or to arrange for the
22 4 performance of services under the service contract, and states
22 5 that the obligations of the provider service company to the
22 6 service contract holder are guaranteed under a service
22 7 contract reimbursement insurance policy.

22 8 b. Clearly and conspicuously states the name and address
22 9 of the issuer of the reimbursement insurance policy.

22 10 c. Identifies the ~~motor vehicle~~ service contract provider,
22 11 the seller of the motor vehicle company obligated to perform
22 12 the service under the service contract, any third-party
22 13 administrator, and the service contract holder to the extent
22 14 that the name and address of the service contract holder has
22 15 been furnished by the service contract holder.

22 16 d. Sets forth the total purchase price of the service
22 17 contract and the terms under which the purchase price of the
22 18 service contract is to be paid.

22 19 e. Sets forth the procedure for making a claim, including
22 20 a telephone number.

22 21 f. Clearly and conspicuously states the dates that
22 22 coverage starts and ends and the existence, terms, and
22 23 conditions of a deductible amount, if any.

22 24 g. Specifies the merchandise or services, or both, to be
22 25 provided and clearly states any and all limitations,
22 26 exceptions, or exclusions.

22 27 h. Sets forth the conditions on which substitution of
22 28 services will be allowed.

22 29 i. Sets forth all of the obligations and duties of the
22 30 service contract holder, including but not limited to the duty
22 31 to protect against any further damage to the motor vehicle,
22 32 and the obligation to notify the ~~provider~~ service company in
22 33 advance of any repair, if any.

22 34 j. Sets forth any and all terms, restrictions, or
22 35 conditions governing transferability of the service contract,

23 1 if any.
23 2 k. Describes or references any and all applicable
23 3 provisions of the Iowa consumer credit code, chapter 537.
23 4 l. States the name and address of the commissioner.
23 5 m. Sets forth any and all conditions on which the service
23 6 contract may be canceled, the terms and conditions for the
23 7 refund of any portion of the purchase price, the identity of
23 8 the person primarily liable to provide any refund, and the
23 9 identity of any other person liable to provide any portion of
23 10 the refund. If the service contract holder cancels the
23 11 service contract, the service company shall mail a written
23 12 notice of termination to the service contract holder within
23 13 fifteen days of the date of the termination.
23 14 n. Permits the service contract holder to cancel and
23 15 return the service contract within at least twenty days of the
23 16 date of mailing the service contract to the service contract
23 17 holder or within at least ten days after delivery of the
23 18 service contract if the service contract is delivered at the
23 19 time of sale of the service contract, or within a longer
23 20 period of time as permitted under the service contract. If no
23 21 claim has been made under the service contract prior to its
23 22 return, the service contract is void and the full purchase
23 23 price of the service contract shall be refunded to the service
23 24 contract holder. A ten percent penalty shall be added each
23 25 month to a refund that is not paid to a service contract
23 26 holder within thirty days of the return of the service
23 27 contract to the service company. The applicable time period
23 28 for cancellation of a service contract shall apply only to the
23 29 original service contract holder that purchased the service
23 30 contract.

23 31 3. A complete copy of the terms of the ~~motor vehicle~~
23 32 service contract shall be delivered to the prospective service
23 33 contract holder at or before the time that the prospective
23 34 service contract holder makes application for the service
23 35 contract. If there is no separate application procedure, then
24 1 a complete copy of the ~~motor vehicle~~ service contract shall be
24 2 delivered to the service contract holder at or before the time
24 3 the service contract holder becomes bound under the contract.

24 4 Sec. 30. Section 516E.6, Code 2005, is amended to read as
24 5 follows:
24 6 516E.6 COMMISSIONER MAY PROHIBIT CERTAIN SALES ==
24 7 INJUNCTION.

24 8 The commissioner shall issue an order instructing ~~the a~~
24 9 ~~provider, service company, or third-party administrator~~ to
24 10 cease and desist from selling or offering for sale ~~motor~~
24 11 ~~vehicle~~ service contracts if the commissioner determines that
24 12 the ~~provider, service company, or third-party administrator~~
24 13 has failed to comply with a provision of this chapter. Upon
24 14 the failure of a ~~motor vehicle provider, service contract~~
24 15 ~~provider company, or third-party administrator~~ to obey a cease
24 16 and desist order issued by the commissioner, the commissioner
24 17 may give notice in writing of the failure to the attorney
24 18 general, who shall immediately commence an action against the
24 19 ~~provider, service company, or third-party administrator~~ to
24 20 enjoin the ~~provider, service company, or third-party~~
24 21 ~~administrator~~ from selling or offering for sale ~~motor vehicle~~
24 22 service contracts until the ~~provider, service company, or~~
24 23 ~~third-party administrator~~ complies with the provisions of this
24 24 chapter and the district court may issue the injunction.

24 25 Sec. 31. Section 516E.7, Code 2005, is amended to read as
24 26 follows:
24 27 516E.7 RULES.

24 28 The commissioner may adopt rules as provided in chapter 17A
24 29 to administer and enforce the provisions of this chapter and
24 30 to establish minimum standards for disclosure of ~~motor vehicle~~
24 31 service contract coverage limitations and exclusions.

24 32 Sec. 32. Section 516E.8, Code 2005, is amended to read as
24 33 follows:
24 34 516E.8 EXEMPTION.

24 35 This chapter does not apply to a ~~motor vehicle~~ service
25 1 contract issued by the manufacturer or importer of the motor
25 2 vehicle covered by the service contract or to any third party
25 3 acting in an administrative capacity on the manufacturer's
25 4 behalf in connection with that service contract.

25 5 Sec. 33. Section 516E.9, Code 2005, is amended to read as
25 6 follows:
25 7 516E.9 MISREPRESENTATIONS OF STATE APPROVAL.

25 8 A ~~motor vehicle~~ service contract ~~provider company~~ shall not
25 9 represent or imply in any manner that the ~~provider service~~
25 10 ~~company~~ has been sponsored, recommended, or approved or that
25 11 the ~~provider's~~ ~~service company's~~ abilities or qualifications

25 12 have in any respect been passed upon by the state of Iowa,
25 13 including the commissioner, the insurance division, or the
25 14 division's securities bureau.

25 15 Sec. 34. Section 516E.10, Code 2005, is amended to read as
25 16 follows:

25 17 516E.10 PROHIBITED ACTS == UNFAIR OR DECEPTIVE TRADE
25 18 PRACTICES.

25 19 1. MISREPRESENTATIONS, FALSE ADVERTISING, AND UNFAIR
25 20 PRACTICES.

25 21 a. Unless licensed as an insurance company, a ~~motor~~
25 22 ~~vehicle service contract provider company~~ shall not use in its
25 23 name, contracts, or literature, the words "insurance",
25 24 "casualty", "surety", "mutual", or any other words descriptive
25 25 of the insurance, casualty, or surety business or deceptively
25 26 similar to the name or description of any insurance or surety
25 27 corporation, or any other ~~motor vehicle service contract~~
25 28 ~~provider company~~.

25 29 b. A ~~motor vehicle service contract provider company~~ shall
25 30 not, without the written consent of the purchaser, knowingly
25 31 charge a purchaser for duplication of coverage or duties
25 32 required by state or federal law, a warranty expressly issued
25 33 by a manufacturer or seller of a product, or an implied
25 34 warranty enforceable against the lessor, seller, or
25 35 manufacturer of a product.

26 1 c. A ~~motor vehicle provider, service contract provider~~
26 2 ~~company, or third-party administrator~~ shall not make, permit,
26 3 or cause a false or misleading statement, either oral or
26 4 written, in connection with the sale, offer to sell, or
26 5 advertisement of a ~~motor vehicle service contract~~.

26 6 d. A ~~motor vehicle provider, service contract provider~~
26 7 ~~company, or third-party administrator~~ shall not permit or
26 8 cause the omission of a material statement in connection with
26 9 the sale, offer to sell, or advertisement of a ~~motor vehicle~~
26 10 service contract, which under the circumstances should have
26 11 been made in order to make the statement not misleading.

26 12 e. A ~~motor vehicle provider, service contract provider~~
26 13 ~~company, or third-party administrator~~ shall not make, permit,
26 14 or cause to be made a false or misleading statement, either
26 15 oral or written, about the benefits or services available
26 16 under the ~~motor vehicle service contract~~.

26 17 f. A ~~motor vehicle provider, service contract provider~~
26 18 ~~company, or third-party administrator~~ shall not make, permit,
26 19 or cause to be made a statement of practice which has the
26 20 effect of creating or maintaining a fraud.

26 21 g. A ~~motor vehicle provider, service contract provider~~
26 22 ~~company, or third-party administrator~~ shall not make, publish,
26 23 disseminate, circulate, or place before the public, or cause,
26 24 directly or indirectly, to be made, published, disseminated,
26 25 circulated, or placed before the public in a newspaper,
26 26 magazine, or other publication, or in the form of a notice,
26 27 circular, pamphlet, letter, or poster, or over a radio or
26 28 television station, or in any other way, an advertisement,
26 29 announcement, or statement containing an assertion,
26 30 representation, or statement with respect to the ~~motor vehicle~~
26 31 service contract industry or with respect to a ~~motor vehicle~~
26 32 ~~provider, service contract provider company, or third-party~~
26 33 ~~administrator~~ which is untrue, deceptive, or misleading. It
26 34 is deceptive or misleading to use any combination of words,
26 35 symbols, or physical materials which by their content,
27 1 phraseology, shape, color, or other characteristics are so
27 2 similar to a combination of words, symbols, or physical
27 3 materials used by a manufacturer or of such a nature that the
27 4 use would tend to mislead a person into believing that the
27 5 solicitation is in some manner connected with the
27 6 manufacturer, unless actually authorized or issued by the
27 7 manufacturer.

27 8 h. A bank, savings and loan association, credit union,
27 9 insurance company, or other lending institution shall not
27 10 require the purchase of a ~~motor vehicle service contract~~ as a
27 11 condition of a loan.

27 12 2. DEFAMATION. A ~~motor vehicle provider, service contract~~
27 13 ~~provider company, or third-party administrator~~ shall not make,
27 14 publish, disseminate, or circulate, directly or indirectly, or
27 15 aid, abet, or encourage the making, publishing, disseminating,
27 16 or circulating of an oral or written statement or a pamphlet,
27 17 circular, article, or literature which is false or maliciously
27 18 critical of or derogatory to the financial condition of a
27 19 person, and which is calculated to injure the person.

27 20 3. BOYCOTT, COERCION, AND INTIMIDATION. A ~~motor vehicle~~
27 21 ~~provider, service contract provider~~ shall not enter into an
27 22 ~~company, or third-party administrator~~ agreement to commit, or

27 23 by a concerted action commit, an act of boycott, coercion, or
27 24 intimidation resulting in or tending to result in unreasonable
27 25 restraint of, or monopoly in, the service contract industry.
27 26 4. ~~FALSE STATEMENTS. A motor vehicle provider, service~~
27 27 ~~contract provider company, or third-party administrator~~ shall
27 28 not knowingly file with a supervisory or other public
27 29 official, or knowingly make, publish, disseminate, circulate,
27 30 or deliver to a person, or place before the public, or
27 31 knowingly cause directly or indirectly to be made, published,
27 32 disseminated, circulated, delivered to a person, or placed
27 33 before the public, a false material statement of fact as to
27 34 the financial condition of a person.

27 35 5. ~~FALSE ENTRIES. A motor vehicle provider, service~~
28 1 ~~contract provider company, or third-party administrator~~ shall
28 2 not knowingly make a false entry of a material fact in a book,
28 3 report, or statement of a person or knowingly fail to make a
28 4 true entry of a material fact pertaining to the business of
28 5 the person in a book, report, or statement of the person.

28 6 6. ~~USED OR REBUILT PARTS. A motor vehicle service~~
28 7 ~~contract provider company~~ shall not repair a motor vehicle
28 8 covered by a ~~motor vehicle~~ service contract with any of the
28 9 following:

28 10 a. Used parts, unless the ~~provider service company~~
28 11 receives prior written authorization by the vehicle owner.

28 12 b. Rebuilt parts, unless the parts are rebuilt according
28 13 to national standards recognized by the insurance division.

28 14 7. ~~MARKETING. A provider, service company, or third-party~~
28 15 ~~administrator shall not market, advertise, offer to sell, or~~
28 16 ~~sell a service contract by using personal information obtained~~
28 17 ~~in violation of the federal Driver's Privacy Protection Act,~~
28 18 ~~18 U.S.C. } 2721 et seq.~~

28 19 7. ~~8. VIOLATIONS OF SECTION 714.16.~~

28 20 a. A violation of this chapter or rules adopted by the
28 21 commissioner pursuant to this chapter is an unfair practice as
28 22 defined in section 714.16.

28 23 b. An enforcement agreement between the commissioner and a
28 24 ~~motor vehicle provider, service contract provider company, or~~
28 25 ~~third-party administrator~~ does not bar the attorney general
28 26 from bringing an action against the ~~provider, service company,~~
28 27 ~~or third-party administrator~~ under section 714.16 as to
28 28 allegations that a violation of this chapter constitutes a
28 29 violation of section 714.16.

28 30 Sec. 35. Section 516E.11, Code 2005, is amended to read as
28 31 follows:

28 32 516E.11 RECORDS == EXPLANATION OF REASONS FOR DENIAL OF
28 33 CLAIMS.

28 34 1. A ~~motor vehicle provider, service contract provider~~
28 35 ~~company, or third-party administrator~~ shall keep accurate
29 1 records concerning transactions regulated under this chapter.

29 2 a. A ~~motor vehicle service contract provider's records~~
29 3 ~~Records of a provider, service company, or third-party~~
29 4 ~~administrator~~ shall include all of the following:

29 5 (1) Copies of ~~all service contracts~~ each type of service
29 6 contract issued or sold.

29 7 (2) The name and address of each service contract holder.

29 8 (3) ~~The Claim files which shall contain, at a minimum, the~~
29 9 dates, amounts, and descriptions of all receipts, claims, and
29 10 expenditures related to service contracts.

29 11 (4) Copies of all materials relating to claims which have
29 12 been denied.

29 13 b. A ~~motor vehicle provider, service contract provider~~
29 14 ~~company, or third-party administrator~~ shall retain all
29 15 required records pertaining to a service contract holder for
29 16 at least two years after the specified period of coverage has
29 17 expired. A ~~provider, service company, or third-party~~
29 18 ~~administrator~~ discontinuing business in this state shall

29 19 maintain its records until the ~~provider, service company, or~~
29 20 ~~third-party administrator~~ furnishes the commissioner
29 21 satisfactory proof that the ~~provider, service company, or~~
29 22 ~~third-party administrator~~ has discharged all obligations to
29 23 contract holders in this state.

29 24 c. ~~Motor vehicle service contract providers~~ Providers,
29 25 service companies, or third-party administrators shall make
29 26 all records concerning transactions regulated under the
29 27 chapter available to the commissioner for the purpose of
29 28 examination.

29 29 d. A ~~provider, service company, or third-party~~
29 30 ~~administrator~~ may keep all records required under this chapter
29 31 in an electronic form. If an administrator maintains records
29 32 in a form other than a printed copy, the records shall be
29 33 accessible from a computer terminal available to the

29 34 commissioner and shall be capable of duplication to a legible
29 35 printed copy.

30 1 2. A ~~motor vehicle service contract provider, service~~
30 2 ~~company, or third-party administrator~~ shall promptly deliver a
30 3 written explanation to the service contract holder, describing
30 4 the reasons for denying a claim or for the offer of a
30 5 compromise settlement, based on all relevant facts or legal
30 6 requirements and referring to applicable provisions of the
30 7 service contract.

30 8 3. A ~~provider, service company, or third-party~~
30 9 ~~administrator shall keep accurate records concerning~~
30 10 ~~transactions regulated under this chapter, including a list of~~
30 11 ~~the locations where service contracts are marketed, sold,~~
30 12 ~~offered for sale, or performed.~~

30 13 Sec. 36. Section 516E.12, Code 2005, is amended to read as
30 14 follows:

30 15 516E.12 SERVICE OF PROCESS.

30 16 The commissioner shall be the agent for service of process
30 17 upon a ~~motor vehicle provider, service contract provider~~
30 18 ~~company, or third-party administrator~~ and an issuer of a
30 19 reimbursement insurance policy.

30 20 Sec. 37. Section 516E.13, subsection 4, unnumbered
30 21 paragraph 1, Code 2005, is amended to read as follows:

30 22 Upon the commissioner's determination that a ~~provider,~~
30 23 ~~service company, or third-party administrator~~ has engaged, is
30 24 engaging, or is about to engage in any act or practice
30 25 constituting a violation of this chapter or a rule adopted
30 26 pursuant to this chapter, the commissioner may issue a summary
30 27 order directing the person to cease and desist from engaging
30 28 in the act or practice resulting in the violation or to take
30 29 other affirmative action as in the judgment of the
30 30 commissioner is necessary to comply with the requirements of
30 31 this chapter.

30 32 Sec. 38. Section 516E.14, Code 2005, is amended to read as
30 33 follows:

30 34 516E.14 AUDITS.

30 35 The commissioner may examine or cause to be examined the
31 1 records of a ~~motor vehicle provider, service contract provider~~
31 2 ~~company, or third-party administrator~~ for the purpose of
31 3 verifying compliance with this chapter. The commissioner may
31 4 require, by a subpoena, the attendance of the ~~provider,~~
31 5 ~~service company, or third-party administrator, or the~~
31 6 ~~provider's~~ a representative thereof, and any other witness
31 7 whom the commissioner deems necessary or expedient, and the
31 8 production of records relating in any manner to compliance
31 9 with this chapter if a ~~provider, service company, third-party~~
31 10 ~~administrator, or witness~~ fails or refuses to produce the
31 11 documents for examination when requested by the commissioner.

31 12 Sec. 39. Section 516E.15, subsection 1, paragraph b, Code
31 13 2005, is amended to read as follows:

31 14 b. A ~~motor vehicle provider, service contract provider who~~
31 15 ~~company, or third-party administrator that fails to file~~
31 16 documents and information with the commissioner as required
31 17 pursuant to section 516E.3 may be subject to a civil penalty.
31 18 The amount of the civil penalty shall not be more than four
31 19 hundred dollars plus two dollars for each ~~motor vehicle~~
31 20 service contract that the person executed prior to satisfying
31 21 the filing requirement. However, a person who fails to file
31 22 information regarding a change in the ~~provider's~~ name or the
31 23 termination of the ~~provider's~~ business of a ~~provider, service~~
31 24 ~~company, or third-party administrator~~ as required pursuant to
31 25 section 516E.3 is subject to a civil penalty of not more than
31 26 five hundred dollars.

31 27 Sec. 40. Section 516E.15, subsection 2, Code 2005, is
31 28 amended to read as follows:

31 29 2. If the commissioner believes that grounds exist for the
31 30 criminal prosecution of a ~~motor vehicle provider, service~~
31 31 ~~contract provider company, or third-party administrator~~ for
31 32 violating this chapter or any other law of this state, the
31 33 commissioner may forward to the attorney general or the county
31 34 attorney the grounds for the belief, including all evidence in
31 35 the commissioner's possession for action deemed appropriate by
32 1 the attorney general or county attorney. At the request of
32 2 the attorney general, the county attorney shall appear and
32 3 prosecute the action when brought in the county served by the
32 4 county attorney.

32 5 Sec. 41. NEW SECTION. 516E.16 COURT ACTION FOR FAILURE
32 6 TO COOPERATE.

32 7 1. If a person fails or refuses to file a statement or
32 8 report or to produce any books, accounts, papers,
32 9 correspondence, memoranda, purchase agreements, files, or

32 10 other documents or records, or to obey a subpoena issued by
32 11 the commissioner, the commissioner may refer the matter to the
32 12 attorney general, who may apply to a district court to enforce
32 13 compliance. The court may order any of the following:
32 14 a. Injunctive relief restricting or prohibiting the offer
32 15 or sale of service contracts.
32 16 b. Production of documents or records including but not
32 17 limited to books, accounts, papers, correspondence, memoranda,
32 18 purchase agreements, files, or other documents or records.
32 19 c. Such other relief as may be appropriate.
32 20 2. A court order issued pursuant to subsection 1 is
32 21 effective until the person who is subject to the order files
32 22 the statement or report, produces the documents requested, or
32 23 obeys the subpoena.

32 24 Sec. 42. NEW SECTION. 516E.17 NET WORTH REQUIREMENT.

32 25 A service company that has issued or renewed in the
32 26 aggregate one thousand or fewer service contracts during the
32 27 preceding calendar year shall maintain a minimum net worth of
32 28 forty thousand dollars. The minimum net worth to be
32 29 maintained shall be increased by an additional twenty thousand
32 30 dollars for each additional five hundred contracts or fraction
32 31 thereof issued or renewed, up to a maximum required net worth
32 32 of four hundred thousand dollars. At least twenty thousand
32 33 dollars of net worth shall consist of paid-in capital.

32 34 Sec. 43. NEW SECTION. 516E.18 PUBLIC ACCESS TO RECORDS.

32 35 1. The administrator shall keep a register of all filings
33 1 and orders which have been entered. The register shall be
33 2 open for public inspection.
33 3 2. Upon request and for a reasonable fee, the
33 4 administrator shall furnish to any person copies of any
33 5 register entry or any document which is a matter of public
33 6 record and not confidential. Copies shall be available during
33 7 normal business hours and may be certified upon request. In
33 8 any administrative, civil, or criminal proceeding, a certified
33 9 copy is prima facie evidence of the contents of the document
33 10 certified.
33 11 3. Pursuant to chapter 22, the administrator may maintain
33 12 the confidentiality of information obtained during an
33 13 investigation or audit.

33 14 Sec. 44. NEW SECTION. 516E.19 ADMINISTRATION.

33 15 1. This chapter shall be administered by the commissioner.
33 16 The deputy administrator appointed pursuant to section 502.601
33 17 shall be the principal operations officer responsible to the
33 18 commissioner for the routine administration of this chapter
33 19 and management of the administrative staff. In the absence of
33 20 the commissioner, whether because of vacancy in the office, by
33 21 reason of absence, physical disability, or other cause, the
33 22 deputy administrator shall be the acting administrator and
33 23 shall, for the time being, have and exercise the authority
33 24 conferred upon the commissioner. The commissioner may from
33 25 time to time delegate to the deputy administrator any or all
33 26 of the functions assigned to the commissioner in this chapter.
33 27 The deputy administrator shall employ officers, attorneys,
33 28 accountants, auditors, investigators, and other employees as
33 29 shall be needed for the administration of this chapter.

33 30 2. Upon request, the commissioner may honor requests from
33 31 interested persons for interpretive opinions.

33 32 Sec. 45. Section 518.14, subsection 4, paragraph a, Code
33 33 2005, is amended to read as follows:

33 34 a. UNITED STATES GOVERNMENT OBLIGATIONS. Obligations
33 35 Bonds or other evidences of indebtedness issued, assumed, or
34 1 guaranteed by the United States of America, or by any
34 2 agency or instrumentality of the United States of America,
34 3 include investments in an open-end management investment
34 4 company registered with the federal securities and exchange
34 5 commission under the federal Investment Company Act of 1940,
34 6 15 U.S.C. } 80(a) and operated in accordance with 17 C.F.R. }
34 7 270.2a-7, the portfolio of which is limited to the United
34 8 States obligations described in this paragraph, and which are
34 9 included in the national association of insurance
34 10 commissioners' securities valuation office's United States
34 11 direct obligation = full faith and credit list.

34 12 Sec. 46. Section 518A.12, subsection 4, paragraph a, Code
34 13 2005, is amended to read as follows:

34 14 a. UNITED STATES GOVERNMENT OBLIGATIONS. Obligations
34 15 Bonds or other evidences of indebtedness issued, assumed, or
34 16 guaranteed by the United States of America, or by any
34 17 agency or instrumentality of the United States of America,
34 18 include investments in an open-end management investment
34 19 company registered with the federal securities and exchange
34 20 commission under the federal Investment Company Act of 1940,

34 21 15 U.S.C. } 80(a) and operated in accordance with 17 C.F.R. }
34 22 270.2a=7, the portfolio of which is limited to the United
34 23 States obligations described in this paragraph, and which are
34 24 included in the national association of insurance
34 25 commissioners' securities valuation office's United States
34 26 direct obligation = full faith and credit list.

34 27 Sec. 47. Section 520.19, Code 2005, is amended to read as
34 28 follows:

34 29 520.19 ANNUAL TAX == FEES.

34 30 In lieu of all other taxes, licenses, charges, and fees
34 31 whatsoever, such attorney shall annually pay to the
34 32 commissioner the same fees as are paid by mutual companies
34 33 transacting the same kind of business, and an annual tax of
34 34 two percent, if a domestic reciprocal organization, and two
34 35 percent, if a foreign reciprocal organization, based upon the
35 1 applicable percentage stated in section 432.1, subsection 4,
35 2 calculated upon the gross premiums or deposits collected from
35 3 subscribers in this state during the preceding calendar year,
35 4 after deducting therefrom returns, or cancellations, and all
35 5 amounts returned to subscribers or credited to their accounts
35 6 as savings, and the amount returned upon canceled policies and
35 7 rejected applications covering property situated or on
35 8 business done within this state.

35 9 Sec. 48. Section 522B.17, Code 2005, is amended to read as
35 10 follows:

35 11 522B.17 PENALTY.

35 12 An insurer or insurance producer who, after hearing, is
35 13 found to have violated this chapter may be ordered to cease
35 14 and desist from engaging in the conduct resulting in the
35 15 violation and may be assessed a civil penalty pursuant to
35 16 chapter 507B.

35 17 A person found who, after hearing, is found to have acted
35 18 violated this chapter by acting as an agent of an insurer or
35 19 otherwise selling, soliciting, or negotiating insurance in
35 20 this state, or offering to the public advice, counsel, or
35 21 services with regard to insurance, who is not properly
35 22 licensed is subject to may be ordered to cease and desist from
35 23 engaging in the conduct resulting in the violation and may be
35 24 assessed a civil penalty according to the provisions of
35 25 chapter 507A.

35 26 If a person does not comply with an order issued pursuant
35 27 to this section, the commissioner may petition a court of
35 28 competent jurisdiction to enforce the order. The court shall
35 29 not require the commissioner to post a bond in an action or
35 30 proceeding under this section. If the court finds, after
35 31 notice and opportunity for hearing, that the person is not in
35 32 compliance with an order, the court may adjudge the person to
35 33 be in civil contempt of the order. The court may impose a
35 34 civil penalty against the person for contempt in an amount not
35 35 less than three thousand dollars but not greater than ten
36 1 thousand dollars for each violation and may grant any other
36 2 relief that the court determines is just and proper in the
36 3 circumstances.

36 4 Sec. 49. NEW SECTION. 522B.17A INJUNCTIVE RELIEF.

36 5 1. An association with at least twenty-five insurance
36 6 producer members may bring an action in district court to
36 7 enjoin a person from selling, soliciting, or negotiating
36 8 insurance in violation of section 522B.2. However, before
36 9 bringing an action in district court to enjoin a person
36 10 pursuant to this section, an association shall file a
36 11 complaint with the insurance division alleging that the person
36 12 is selling, soliciting, or negotiating insurance in violation
36 13 of section 522B.2.

36 14 2. If the division makes a determination to proceed
36 15 administratively against the person for a violation of section
36 16 522B.2, the complainant shall not bring an action in district
36 17 court against the person pursuant to this section based upon
36 18 the allegations contained in the complaint filed with the
36 19 division.

36 20 3. If the division does not make a determination to
36 21 proceed administratively against the person for a violation of
36 22 section 522B.2, the division shall issue, on or before ninety
36 23 days from the date of filing of the complaint, a release to
36 24 the complainant that permits the complainant to bring an
36 25 action in district court pursuant to this section.

36 26 4. The filing of a complaint with the division pursuant to
36 27 this section tolls the statute of limitations pursuant to
36 28 section 614.1 as to the alleged violation for a period of one
36 29 hundred twenty days from the date of filing the complaint.

36 30 5. Any action brought in district court by a complainant
36 31 against a person pursuant to this section, based upon the

36 32 allegations contained in the complaint filed with the
36 33 division, shall be brought within one year after the ninety=
36 34 day period following the filing of the complaint with the
36 35 division, or the date of the issuance of a release by the
37 1 division, whichever is earlier.

37 2 6. If the court finds that the person is in violation of
37 3 section 522B.2 and enjoins the person from selling,
37 4 soliciting, or negotiating insurance in violation of that
37 5 section, the court's findings of fact and law, and the
37 6 judgment and decree, when final, shall be admissible in any
37 7 proceeding initiated pursuant to section 522B.17 by the
37 8 commissioner against the person enjoined and the person
37 9 enjoined shall be precluded from contesting in that proceeding
37 10 the court's determination that the person sold, solicited, or
37 11 negotiated insurance in violation of section 522B.2.

37 12 Sec. 50. Section 523A.402, subsection 6, paragraph c, Code
37 13 2005, is amended to read as follows:

37 14 c. The annuity shall not be contestable, or limit death
37 15 benefits in the case of suicide, with respect to that portion
37 16 of the face amount of the annuity which is required by
37 17 paragraph "b". The annuity shall not refer to physical
37 18 examination, or otherwise operate as an exclusion, limitation,
37 19 or condition other than requiring submission of proof of death
37 20 or surrender of the annuity at the time the prepaid purchase
37 21 agreement is funded, matures, or is canceled, as the case may
37 22 be.

37 23 Sec. 51. EFFECTIVE AND RETROACTIVE APPLICABILITY DATES.

37 24 This section and the sections of this Act amending sections
37 25 513C.6 and 514E.2, and amending section 514E.7, subsection 1,
37 26 by enacting paragraph "e", being deemed of immediate
37 27 importance, take effect upon enactment. The section of the
37 28 Act amending section 513C.6 is retroactively applicable to
37 29 January 1, 2005, and is applicable on and after that date.
37 30 The sections of the Act amending section 514E.2 are
37 31 retroactively applicable to July 1, 1986, and are applicable
37 32 on and after that date. The portion of the section of the Act
37 33 amending section 514E.7, subsection 1, by enacting paragraph
37 34 "e" is retroactively applicable to January 1, 2005, and is
37 35 applicable on and after that date.

38 1 SF 360

38 2 av:rj/cc/26